

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
CARLINVILLE, MACOUPIN COUNTY, ILLINOIS

FILED

OCT 21 2019


Clerk of the Circuit Court
Macoupin County, Illinois

CAMILLE MAYFIELD COOPER BROTZE,)
And WAYNE BROTZE, husband and wife,)
)
Plaintiffs,)
)
vs)
)
CITY OF CARLINVILLE, ILLINOIS, a)
Municipal Corporation,)
)
Defendant.)

No. 2019 MR 92
(formerly filed as 18 L 5)

ORDER

Re: Defendant's Motions to Dismiss Pursuant to 735 ILCS 5/2-615

Case called for hearing on Defendant City of Carlinville's following three Motions: 1) Motion to Dismiss Complaint for Mandamus with Prejudice for Failure to State a Cause of Action; 2) Motion to Dismiss Complaint for Mandamus and Violation of Open Meetings Act with Prejudice; and 3) Motion to Dismiss Complaint for Mandamus and Violation of Freedom of Information Act with Prejudice. Plaintiffs appear in person, along with Attorney Smallhorn. Defendant appears in person, along with Attorney O'Brien. Arguments heard.

Plaintiffs' Second Amended Complaint for a Writ of Mandamus argues that the City of Carlinville (Carlinville) owed them a duty to follow Illinois law and that it exceeded its constitutional and statutory authority when it, as a non-home-rule municipality, entered into a verbal¹ agreement with another non-home-rule municipality and a private not-for-profit corporation, wherein the three entities agreed to create and manage a brand new not-for-profit

¹ The Court presumes the agreement was verbal because neither party (or the previous parties to 18 L 5) ever produced a written agreement or documents regarding how the concept of Illinois Alluvial was ever created.

corporation that would supply potable water to them and surrounding residents. Plaintiffs argue they have a right to expect their elected officials (the City Council, collectively) will follow the law in creating solutions for providing them and the residents with potable water, and that had their elected officials not exceeded their constitutional and statutory authority, then they would have been allowed to know pertinent information as to how the potable water was going to be created and supplied, etc., but that because Carlinville's City Council arguably exceeded its authority, they and the residents of Carlinville have been denied transparency regarding governmental decisions.

In other words, Plaintiffs have argued that they and other similarly situated citizens have a right to expect their elected officials will not exceed or abuse their statutory and constitutional authority, that their elected officials will ensure their water is lawfully supplied to them, and had the City of Carlinville attempted to solve its potable water supply issue by creating or partnering with any of the following statutory entities for non-home-rule municipalities: a "Public Water District," a "Water Commission," or a "Municipal Joint Action Water Agency," then Plaintiffs would have had the right to know what decisions were being made regarding potable water and lack of transparency would no longer be an issue.

Plaintiffs' Complaint for Mandamus asks this Court to require the City of Carlinville comply with its constitutional and statutory obligations and withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial Rural Water Company (Illinois Alluvial). Plaintiffs', in essence, are asking this Court to declare Illinois Alluvial is not a legal entity because it was created by two non-home-rule municipalities (in conjunction with a

private not-for-profit corporation) that did not have express legal authority to do so pursuant to Dillon's Rule and the Illinois Constitution.

I.
Motion to Dismiss Complaint for Mandamus with Prejudice for Failure to State a Cause of Action Pursuant to 735 ILCS 5/2-615

Defendant argues that Plaintiffs failed to state a cause of action for a Writ of Mandamus because they do not allege facts identifying the City Council members' specific names, any duty the City Council members owed them, and what the Council members did or did not do to breach this duty. Defendant further argues the Complaint for Writ of Mandamus does not allege any monetary damages or harm, does not allege what or whose rights were violated by the City's actions, and does not allege Plaintiffs demanded the City of Carlinville cease its operation with Illinois Alluvial and that the City of Carlinville refused.

Finally, Defendant argues that Illinois Alluvial is a necessary party and should be named in this litigation since a ruling by this Court may adversely affect its rights. As Defendant will recall, this Court granted the Village of Dorchester's, Jersey County Rural Water District's, and Illinois Alluvial's arguments that Plaintiffs lacked standing to sue them because Plaintiffs are not a party to or privy to any contracts at issue (i.e., the by-laws and the articles of incorporation), and the Court dismissed those Defendants with prejudice in its January 2, 2019 Order. Moreover, it would not be proper to name Illinois Alluvial since a Writ of Mandamus does not apply to private corporations.

The Court finds Plaintiffs' Second Amended Complaint pleads sufficient facts to state a cause of action and denies this Motion to Dismiss.

II.
Motion to Dismiss Complaint for Mandamus and Violation of the Open Meetings Act with
Prejudice Pursuant to 735 ILCS 5/2-615

Defendant argues Plaintiffs' Complaint for a Writ of Mandamus "appears to have alleged a violation of the Open Meetings Act and 'transparency.'" Plaintiffs deny this in their responsive pleading and instead reiterate that the creation of a brand new, not-for-profit corporation has denied them the right to government transparency and openness. A careful review of Plaintiffs' Second Amended Complaint shows that Plaintiffs did not attempt to state a cause of action based on a violation of the Open Meetings Act. Had they, then Defendant's argument would have merit, but this Court cannot force a party to allege a cause of action that is not supported by the facts. As such, Defendant's Motion to Dismiss is not ripe and is denied.

III.
Motion to Dismiss Complaint for Mandamus and Violation of Freedom of Information Act
with Prejudice Pursuant to 735 ILCS 5/2-615

Defendant argues in this Motion that Plaintiffs' Second Amended Complaint appears to allege a violation of the Freedom of Information Act (FOIA), and that because Illinois Alluvial is a private corporation, it is not subject to this Act. Defendant further injects the argument that Plaintiffs' Complaint fails to allege Illinois Alluvial is a subsidiary of the City of Carlinville, such that FOIA would apply, and therefore, should be dismissed for failure to state a cause of action. Again, a careful review of Plaintiffs' Second Amended Complaint indicates Plaintiffs did not attempt to state a cause of action for a FOIA violation because the facts do not support it. Rather, it is Plaintiffs' position that had the City of Carlinville joined forces with or created a water supply entity that is expressly authorized by statute, then that entity perhaps could have been considered a subsidiary and subject to the Open Meetings Act and FOIA, but that did not happen in this case.

and is an issue not pending before the Court since Illinois Alluvial is technically a separate, private entity. Accordingly, Defendant's third Motion to Dismiss is dismissed.

IV. **Alternative Relief**

In Plaintiffs' Response, they ask this Court, pursuant to Illinois Supreme Court Rule 308(a), to find that its ruling involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this Order may materially advance the ultimate termination of the litigation. Plaintiffs then present the following proposed certified question for appeal:

Does the City of Carlinville, Illinois, a non-home-rule municipality, have authority under Article VII of the Illinois Constitution to join with other municipalities and one or more private, not-for-profit corporations to create, manage and fund an Illinois not-for-profit corporation, where there is no statute which expressly authorizes the creation of such a corporation?

The City of Carlinville objects and believes the Court first has to make a finding as to whether the City of Carlinville did or did not exceed its statutory and constitutional authority. While the Court disagrees that it is required to make that express finding in its denial of Defendant's Motions to Dismiss, the Court granted Defendant seven (7) days to research this issue and to present any case law to support its argument and/or an alternative certified question for the Court's consideration.

V. **Conclusion**

Before considering the parties' substantive arguments at hearing, the Court offered the following opening remarks, which the Court will reiterate:

The Court recognizes water supply is an issue for the residents of Carlinville. The Court recognizes that the City has tried to take steps to rectify the issue. And while the

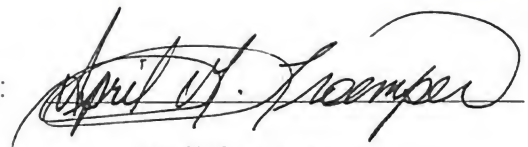
Court is sympathetic to the needs of the residents with regard to clean, potable water, the Court cannot allow sympathy and compassion to enter into its analysis; nor can the Court consider what developments may or may not be occurring right now or how much money has since been invested because those facts are not before the Court. That is why this Court cannot and will not consider the hearsay article that Defense counsel attached to its Motion to Dismiss. The parties know that is not a proper way to present evidence to the Court at this pleading stage. What we know is this ... had Illinois Alluvial already been in existence as non-for-profit organization in the business of supplying potable water, we would not even be here arguing these issues today, but that is not what happened.

Illinois Alluvial is clearly a legal entity on paper, but if Plaintiffs were to succeed in their argument, then Illinois Alluvial would have been created in violation of the law and/or without express authority. In other words, if a Higher Court were to determine that the City of Carlinville exceeded its statutory and constitutional authority, then Illinois Alluvial arguably would cease to exist.

As the parties know, a Writ of Mandamus can be used to compel the undoing of an act not authorized by law or to require public entities and/or officials to comply with State law. Plaintiffs have raised a valid argument, and this Court will not deprive them of the opportunity to litigate their cause of action. Defendant's Motions to Dismiss are denied and Plaintiff's Request to present a certified question for appeal is granted subject to review of any additional legal authority Defendant may present in opposition and a review and consideration of the parties' proposed certified questions.

Entered: October 21, 2019

By:

A handwritten signature in black ink, appearing to read "April G. Troemper", written over a horizontal line.

April G. Troemper
Circuit Court Judge, 7th Judicial Circuit